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for the fiscal year ending in 1985, after excluding inpatient operating costs related to services provided to Medicare beneficiaries, for such discrete areas in excess of hospital's comparable component of reimbursable inpatient operating costs for its fiscal year ending in 1981, after excluding inpatient operating costs related to services provided to Medicare beneficiaries, trended to 1985 and adjusted to reflect approved rate adjustments.

(b)(1) For purposes of calculating the group-based average cost per discharge pursuant to section 86-1.54(b) of this Subpart, an additional amount equal to 10 percent of \$40 million in rate year 1988, 25 percent of \$40 million trended to 1989 in rate year 1989, and 55 percent of \$40 million trended to [1990 in] rate year 1990 and the applicable rate year thereafter, shall be distributed to all non-exempt hospitals reimbursed under the case payment system set forth in this Subpart and to all specialty hospitals exempt from the case payment system based on the ratio of the 1988 intermediate group operating costs of each such general hospital, and to costs of general hospitals that are excluded from the case based payment system based on the ratio of the 1988 intermediate operating costs of each such general hospital, to the total sum of such intermediate group operating costs and intermediate operating costs for specialty hospitals applied to the appropriate percentage of the \$40 million.

(2) For purposes of this clause, intermediate group operating costs of a general hospital shall be

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calculated in accordance with section 86-1.54(b)(1) and (3) of this Subpart and divided by the facility's WEF and PEF determined pursuant to subdivision (j) of such section and the case mix index determined pursuant to paragraph (a)(3) of such section.

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(3) For purposes of this clause, intermediate operating costs of a general hospital exempt from the case-based payment system shall be calculated pursuant to section 86-1.54(e)(1) of this Subpart, trended to the rate and increased to reflect special additional inpatient operating costs determined in accordance with clause (a) of this subparagraph and adjusted to exclude a factor for operating costs of patients who require ALC services pursuant to section 86-1.56 of this Subpart and adjusted to exclude the costs related to education, physician, ambulance services, organ acquisition costs and malpractice insurance costs and the components of these costs included in the special additional inpatient operating costs determined in clause (a) of this subparagraph.

(iv) Special additional inpatient operating costs equal to approximately \$289 million shall be distributed to all hospitals licensed under Article 28 of the Public Health Law that are reimbursed according to the provisions of this Subpart except those comprehensive cancer hospitals or exempt children's hospitals reimbursed pursuant to section 86-1.81 of this Subpart, through additions to the 1991 reimbursable costs used to calculate the case based payment rates for rate year 1991 pursuant to subdivisions (a) and (b) of section 86-1.54 of this Subpart and such additions shall be trended to subsequent rate years by the trend factor established pursuant to section 86-1.58 of this Subpart. Such amounts shall be allocated as follows:

(a) Up to \$222 million shall be allocated for labor adjustments. If the total of the labor shortfalls determined pursuant to subclause (1) and (2) of this clause is less than or equal to \$222 million, then such adjustments shall be fully funded. If the total of the labor shortfalls determined

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clause is greater than \$222 million, then the amount allocated to cover the shortfalls pursuant to subclause (2) of this clause shall be funded at the lower of 20 percent of the \$222 million or its proportional share of the sum of the shortfalls calculated pursuant to subclauses (1) and (2) of this clause unless, however, the labor shortfalls determined pursuant to subclause (1) of this clause represent less than 80 percent of the \$222 million, in which case such shortfalls shall be fully funded and the amount allocated for labor shortfalls determined pursuant to subclause (2) of this clause shall be equal to the difference between \$222 million and the total amount of the adjustment specified in subclause (1) of this clause.

(1) Shortfalls for labor cost increases related to registered nurses' salaries and fringe benefits (20 percent of salaries) and ~~[for]~~ the ripple effect ~~[of]~~ on other health care professionals in excess of the trend factor between 1985 and June 30, 1990 for both inpatient and outpatient costs shall be based exclusively on regional experience.

(i) The regions shall be as follows:

| <u>Region</u> | <u>Counties Included in Region</u> |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Western | Allegany, Cattaraugus, Chautaugua, Erie, Genesee, Niagara, Orleans, Wyoming |
| Finger Lakes | Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates |
| Central | Cayuga, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tompkins |
| NY-Penn | Broome, Chenango, Tioga |
| Northeast | Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington |
| Hudson Valley | Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester |

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| | |
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| New York City | Bronx, Kings, New York, Queens |
| | Richmond |
| Nassau-Suffolk | Nassau, Suffolk |

(ii) Such regional adjustment shall not be less than zero.

(iii) The 1985 regional average dollar per hour for registered nurse salaries and fringe benefits trended to 1990 shall be subtracted from the regional average dollar per hour calculated for the six month period ending June 30, 1990 based on surveys submitted to the Department of Health on or before November 1, 1990. The result shall be multiplied by total annualized reported 1990 registered nurse hours for the region and increased by 35 percent for the ripple effect on other health care professionals to determine the labor cost increases related to registered nurses' salaries and fringe benefits and for the ripple effect on other health care professionals for each region. These increases shall be reduced by the monies received by the facilities in each region for the 1988 nursing salary adjustment to determine the labor shortfall.

(iv) Each individual hospital within each region determined in item (i) of this subclause shall receive a portion of the funded regional adjustment equal to its share of the total inpatient and outpatient reimbursable operating costs for the region excluding costs related to services provided to beneficiaries of title XVIII of the federal Social Security Act and excluding direct medical ~~operation~~ costs.

(2) Shortfalls related to personnel costs other than those related to registered nurse salaries and fringe benefits and for

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provided to beneficiaries of title XVIII of the Federal Social Security Act and excluding direct medical education costs.

(b) \$33 million shall be allocated for technology advances and changes in medical practice. Amounts allocated to each general hospital shall be based on a fixed amount per bed determined by multiplying the number of certified inpatient beds for each general hospital as of June 30, 1990 by the result of dividing the \$33 million by the sum of the certified inpatient beds for all general hospitals.

(c) \$26 million shall be allocated to costs of general hospitals based on the costs incurred in excess of the trend factor between 1985 and 1989 in the following discrete areas: infectious and other waste disposal costs, universal precautions, working capital interest costs, costs for asbestos removal, costs of low osmolality contrast media, malpractice costs, water and sewer charges, ambulance costs, service contracts, prosthetic and [orthotic] orthotic devices[7] and costs related to designation as a trauma center and contracted nursing services.

(1) If the 1989 costs incurred in excess of the trend factor between 1985 and 1989 summed for each discrete area for all general hospitals is greater than or equal to \$26 million, the \$26 million shall be allocated to costs of general hospitals based on the ratio of each general hospital's 1989 costs incurred in excess of the trend factor in such discrete areas, summed, to the total sum of such cost over trend of all general hospitals.

(2) If the 1989 costs incurred in excess of the trend factor between 1985 and 1989 summed for all general hospitals is less than \$26 million, the allocated costs to each general hospital

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shall be their 1989 costs incurred in excess of the trend factor between 1985 and 1989 summed for all discrete areas. The remainder of such \$26 million shall be distributed to each general hospital pursuant to the provisions of ~~[subparagraph (iii)(a)(4) of this paragraph]~~ subclause (4) of clause (a) of this subparagraph.

(d) An amount equal to \$7.2 million shall be allocated to all eligible hospitals to account for increases in the number of patients admitted through the emergency room and the high cost of treating such patients.

(1) The adjustment shall be available to all general hospitals except those which experienced a decrease in non-Medicare inpatient admissions through the emergency room in 1989 from the 1981 base year or if the hospital was not operating in 1981, the applicable base year.

(2) Each eligible hospital's 1991 reimbursable costs shall be adjusted as follows:

(i) The change in inpatient admissions through the emergency room, excluding those admissions through the emergency room related to Medicare, from the 1981 base year, or if the hospital was not operating in 1981, the applicable base year to 1989 shall be determined for those hospitals as defined in subclause (1) of this clause. The results shall be summed to determine the statewide change in non-Medicare inpatient admissions through the emergency room.

(ii) The proportionate hospital-specific change in non-Medicare admissions through the emergency room shall be calculated for each eligible hospital by dividing each hospital's non-Medicare change in inpatient admissions through

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the emergency room by the statewide change in non-Medicare inpatient admissions through the emergency room determined pursuant to item (i) of this subclause.

(iii) The hospital-specific allocation shall be determined by multiplying the proportionate hospital-specific change in non-Medicare inpatient admissions through the emergency room determined pursuant to item (ii) of this subclause by \$7.2 million.

(e) \$250 per bed for recruiting and retaining health care personnel shall be allocated to the costs of each general hospital having less than 201 certified acute nonexempt inpatient beds as of June 30, 1990 and which meets one of the following criteria:

(1) The hospital is classified as a rural hospital for purposes of determining payment for inpatient services provided to beneficiaries of title XVIII of the Federal Social Security Act (Medicare) since the hospital is located in a rural area as defined by federal law (see 42 U.S.C. section 1395 ww(d)(2)(D)) or defined as a rural hospital under state law; or

(2) The hospital meets the Federal definition of "sole community hospital" as defined in federal law (see 42 U.S.C. section 1395 ww(d)(5)(d)(iii)) [→].

(f) Any portion of the total not allocated in accordance with clauses (a) through (e) of this subparagraph shall be reallocated to further fund the adjustments specified in clauses (c) and (d) of this subparagraph and subdivision (c) of section 86-1.82 of this Subpart in the same proportion as the original funding.

(v) Special additional inpatient operating costs equal to approximately \$167 million shall be distributed to all hospitals licensed under state law that are reimbursed according to the provision of this Subpart through additions to the 1994 reimbursable costs used to calculate the case-based payment rates for rate year 1994 pursuant to subdivisions (a) and (b) of section 86-1.54 of this Subpart and such additions shall be trended to subsequent rate years. Such amount shall be allocated as follows:

(a) \$46 million shall be allocated to the costs for general hospitals for treatment of tuberculosis patients. Amounts allocated to each general hospital shall be based on the general hospital share of the statewide total non-Medicare inpatients with tuberculosis and discharged during the period July 1, 1992 through June 30, 1993 and classified to diagnosis related groups

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(DRGs) 475, 483, 540, 701-716 and 798-801.

(b) \$63 million shall be allocated to general hospitals for labor adjustments. Such amount shall be allocated as follows:

(1) An amount equal to \$55 million shall be allocated for labor cost increases incurred prior to June 30, 1993. Amounts allocated to each general hospital shall be based on the general hospital's share of the statewide total of inpatient and outpatient reimbursable operating costs based on 1990 data excluding costs related to inpatient services provided to beneficiaries of title XVIII of the Federal Social Security Act (Medicare) and excluding direct medical education costs, as determined pursuant to section 86-1.54 (g) (3);

(2) An amount equal to \$8 million shall be allocated for labor adjustments to general hospitals located in the counties of Ulster, Sullivan, Orange, Dutchess, Putnam, Rockland, Columbia, Delaware and Westchester, to account for prior disproportionate increases in unreimbursed labor costs. Each general hospital determined pursuant to this subclause shall receive a portion of the \$8 million equal to the general hospital's portion of the total inpatient and outpatient reimbursable operating costs based on 1990 data for all hospitals located in the counties identified

pursuant to this subclause, excluding costs related to services provided to beneficiaries of title XVIII of the Federal Social Security Act (Medicare) and excluding direct medical education costs, as determined pursuant to section 86-1.54(g) (3).

(c) \$55 million shall be allocated for increased activities related to regulatory compliance for universal precautions and infection control related to AIDS, tuberculosis, and other infectious diseases including the training of employees with regard to infection control, and for infectious and other waste disposal costs. A fixed amount per bed shall be allocated to the costs of each general hospital based on the total number of inpatient beds for which each hospital is certified as of August 24, 1993.

(d) An amount equal to \$3 million shall be allocated to the costs of each general hospital in the following manner and which meet the following criteria:

(1) \$250 per bed shall be allocated to the costs of each general hospital having less than 201 certified acute care beds as of August 24, 1993 and classified as a rural hospital for purposes of determining payment for inpatient services provided to beneficiaries of title XVIII of the Federal Social Security Act (Medicare) since the hospital is located in a rural area as defined by Federal law (see 42 U.S.C. section 1395 ww(d) (2) (D)) or defined

as a rural hospital under section 700.2 (a) (21) of

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(2) The remainder of such \$3 million shall be allocated to those general hospitals as determined pursuant to this clause for the purposes of recognizing the unique costs incurred in providing inpatient services in remote or sparsely populated areas according to the following methodology:

(i) the net income or the net loss expressed as a negative, as a proportion of each such hospital's net patient revenue, based on operating results for the 1990 and 1991 rate years, shall be computed and averaged, and expressed as a percentage;

(ii) the resulting percentage for each such hospital shall be multiplied by each such hospital's total inpatient beds certified as of June 30, 1990. The resulting products for each such hospital shall be summed, and such sum shall be divided by the total number

of inpatient beds certified as of June 30, 1990 for all such hospitals. The resulting quotient shall be the New York weighted average rural operating margin expressed as a percentage; and

(iii) one percentage point shall be subtracted from each such hospital's average net operating margin, and the result shall be divided by the weighted average rural operating margin; and

(iv)(a) if the quotient determined pursuant to item (iii) of this subclause is less than zero, then the absolute value of such quotient shall be multiplied by each such hospital's number of certified inpatient beds as of June 30, 1990. This product shall then be multiplied by \$150, and such result shall be each such hospital's adjustment pursuant to this clause;

(b) if the quotient determined pursuant to item (iii) of this subclause is equal to or greater than zero, such hospital's adjustment pursuant to this clause shall be zero; and

(c) provided, however, if the total of all adjustments determined pursuant to this subclause exceeds the amount to be allocated in accordance with this subclause, each such hospital's adjustment shall be proportionately reduced.

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